IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 7TH DECEMBER 2007 / 16TH AGRAHAYANA 1929

CRP.No. 838 of 2004(A)

AGAINST THE ORDER IN CA.79/2003 IN EP.36/2002
IN LAR.121/1990 of PRINCIPAL SUB COURT,KOCHI

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REVN. PETITIONERS: PETITIONERS/DECREE HOLDERS

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1. VASUDEVAN NAMBOOTHIRI
   S/O. PARAMESWARAN NAMBOOTHIRI, AGED 80 YEARS,
   ALAYIKKATTU ILLOM, THUTHIYUR KARA,
   THRIKKAKARA SOUTH PAKUTHI.

2. DEVAKI ANTHARJANAM,
   W/O. VASUDEVAN NAMBOOTHIRI, AGED 72 YEARS,
   ALAYIKKATTU ILLOM, THUTHIYUR KARA,
   THRIKKAKARA SOUTH PAKUTHI.

3. PARAMESWARAN NAMBOOTHIRI,
   S/O. VASUDEVAN NAMBOOTHIRI, AGED 54 YEARS,
   ALAYIKKATTU ILLOM, THUTHIYUR KARA,
   THRIKKAKARA SOUTH PALUTHI.

4. SANKARANARAYANAN NAMBOOTHIRI,
   S/O. VASUDEVAN NAMBOOTHIRI, AGED 50 YEARS,
   ALAYIKKATTU ILLOM, THUTHIYUR KARA,
   THRIKKAKARA SOUTH PAKUTHI.

5. VASUDEVAN NAMBOOTHIRI
   S/O.VASUDEVAN NAMBOOTHIRI, AGED 48 YEARS,
   ALAYIKKATTU ILLOM THUTHIYUR KARA,
   THRIKKAKARA SOUTH PAKUTHI.

6. KRISHNAN NAMBOOTHIRI
   S/O. VASUDEVAN NAMBOOTHIRI, AGED 46 YEARS,
   ALAYIKKATTU ILLOM, THUTHIYUR KARA,
   THRIKKAKARA SOUTH PAKUTHI.

7. NARAYANAN NAMBOOTHIRI
   S/O. VASUDEVAN NAMBOOTHIRI, AGED 41 YEARS,
   ALAYIKKATTU ILLOM, THUTHIYUR KARA,
   THRIKKAKARA SOUTH PAKUTHI.

8. KUMARAN NAMBOOTHIRI
S/O.VASUDEVAN NAMBOOTHIRI, AGED 44 YEARS,
ALAYIKKATTU ILLAM, THUTHIYUR KARA,
THRIKKAKARA SOUTH PAKUTHI.

BY ADV. SRI.K.V.JAYACHANDRAN

RESPONDENT/RESPONDENT/JUDGMENT DEBTOR

STATE OF KERALA, REPRESENTED BY THE
DISTRICT COLLECTOR, ERNAKULAM.

BY GOVERNMENT PLEADER SHRI DILEEP

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 07/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T. SANKARAN, J.

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C.R.P. No. 838 OF 2004

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Dated this the 7th December , 2007

O R D E R

This revision is filed challenging the order dated 20th December, 2003 in C.A.No. 79 of 2003 in E.P.No. 36 of 2002 in L.A.R.No. 121 of 1990. The decree holder as well as the judgment debtor filed statements. According to the decree holder, the amount deposited by the judgment debtor should at first be appropriated towards the interest, while according to the judgment debtor , such a course cannot be adopted in view of decision in **1998 (1) K.L.T. 182** ***(Mathunni Mathai vs. State of Kerala)***. The court below accepted the contention raised by the judgment debtor following the decision in ***Mathunni Mathai vs. State of Kerala .***

2. Learned counsel for the petitioner submitted that in view of the decision of the Supreme Court in ***Gurpreet Singh vs. Union of India*** **[(2006) 8 S.C.C 457**], the order passed by the court below is not sustainable. In **Gurpreet Singh vs. Union of India ([2006] 8 S.C.C. 457).** the Supreme Court held, in paragraph 54, as follows:

> *"One other question also was sought to be raised and answered by this Bench though not referred to it. Considering that the question arises in various cases pending in courts all over the country, we permitted the counsel to address us on that question. That question is whether in the light of the decision in Sunder, the awardee/decree-holder would be entitled to claim interest on solatium in execution though it is not specifically granted by the*

decree. It is well settled that an execution court cannot go behind the decree. If, therefore, the claim for interest on solatium had been made and the same has been negatived either expressly or by necessary implication by the judgment or decree of the Reference Court or of the appellate court, the execution court will have necessarily to reject the claim for interest on solatium based on Sunder on the ground that the execution court cannot go behind the decree. But if the award of the Reference Court or that of the appellate court does not specifically refer to the question of interest on solatium or in cases where claim had not been made and rejected either expressly or impliedly by the Reference Court or the appellate court, and merely interest on compensation is awarded, then it would be open to the execution court to apply the ratio of ***Sunder*** *and say that the compensation awarded includes solatium and in such an event interest on the amount could be directed to be deposited in execution. Otherwise, not. We also clarify that such interest on solatium can be claimed only in pending executions and not in closed executions and the execution court will be entitled to permit its recovery from the date of the judgment in* ***Sunder*** *(19.09.2001) and not for any prior period. We also clarify that this will not entail any reappropriation or fresh appropriation by the decree holder. This we have indicated by way of clarification also in exercise of our power under Articles 141 and 142 of the Constitution of India with a view to avoid multiplicity of litigation on this question."*

In view of the decision of the Supreme Court in ***Gurpreet Singh vs. Union of India***, the order passed by the court below is set aside and the matter is remitted to the court below for fresh disposal. The court below shall apply the decision in ***Gurpreet Singh vs. Union of India*** and pass appropriate orders in accordance with law.

K.T. SANKARAN,
JUDGE.

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